

**FLOOR SPEECH OF SENATOR CARDIN**  
**NOMINATION OF ELENA KAGAN,**  
**SOLICITOR GENERAL OF THE UNITED STATES**

**March 19, 2009**

Mr. CARDIN. Mr. President, when President Obama nominated Elena Kagan to be the Solicitor General of the United States, I must tell you, I was extremely pleased because I knew of her reputation, I knew of her background, and I thought she would be an excellent choice to be the Solicitor General of the United States.

Chairman Leahy allowed me to chair the hearing on her confirmation. At that hearing, there were spirited questions asked by many members of the Judiciary Committee. We had a chance to review the background record we go through in the confirmation process. Ms. Kagan responded to the questions of the committee members.

I must tell you, I was even more impressed with this individual to be Solicitor General of the United States. I thought she did an excellent job in responding to the questions of the committee and answering them with candor and giving great confidence that she will represent the United States well before the courts of this country.

The Solicitor General has to appear before the Supreme Court. The Supreme Court Justices can be very difficult in their questioning, as can Members of the Senate during confirmation. I think Elena Kagan demonstrated her ability to represent our Nation well as the Solicitor General of the United States.

She comes to this position very well qualified, as far as her experience is concerned. I know Chairman Leahy has spoken frequently about the need to continue to restore the morale and integrity of the Department of Justice which has been battered in recent years. I think Elena Kagan will help us restore the reputation of the Department of Justice and help us because of her dedication--and experience--to public service.

She brings a wide range of service, having served as dean of a law school, a law professor, a senior official at the White House, a lawyer in private practice, a legal clerk for a Justice of the Supreme Court.

A graduate from Princeton University and Harvard Law School, Ms. Kagan clerked for Justice Thurgood Marshall on the Supreme Court and then worked as an associate at the Washington law firm of Williams & Connolly. While teaching law at the University of Chicago, she took on another special assignment as special counsel to Senator Joe Biden who was then chairman of the Judiciary Committee. Ms. Kagan assisted in the confirmation hearings of Supreme Court Justice Ruth Bader Ginsburg.

Then in 1995, Ms. Kagan returned to public service to serve as President Clinton's associate White House counsel, Deputy Assistant to the President for Domestic Policy, and Deputy Director of the Domestic Policy Council. So she has a combined academic background as well as public service.

In 1999, Ms. Kagan left Government and began serving as a professor at Harvard Law School, teaching administrative law, constitutional law, civil procedures, and a seminar on legal issues and the Presidency.

In 2003, she was appointed to serve as the dean of the Harvard Law School, becoming the first woman ever to be dean in that school's history.

We have a lot of information that we gather during the confirmation process. One of the most impressive letters was a letter we received from the deans of 11 major law schools in support of the nomination. These are your colleagues. They know you best. They know your qualifications.

The letter states in part that the Office of Solicitor General is a job that ``requires administrative and negotiation skills as well as legal acumen, and Elena Kagan excels along all relevant dimensions. Her skills in legal analysis are first rate. Her writings in constitutional and administrative law are highly respected and widely cited. She is an incisive and astute analyst of law, with a deep understanding of both doctrine and policy. .... Ms. Kagan is also an excellent manager. She has been a superb dean at Harvard ..... Finally, Elena Kagan is known to us as a person of unimpeachable integrity."

The Solicitor General of the United States holds a unique position in our Government. The Solicitor General is charged with conducting all litigation on behalf of the United States in the Supreme Court and is often referred to as the ``10th Justice." Indeed, the Supreme Court expects the Solicitor General to provide the Court with candid advice during oral argument and the filing of briefs on behalf of the United States. The office participates in about two-thirds of all the cases the Court decides on the merits each year.

So it is indeed high praise for Dean Kagan that former Solicitors General Walter Dellinger and Ted Olson joined with six other Solicitors General from both parties--Democrats and Republicans--to write a letter endorsing her nomination. If I might, I would like to quote from the letter from the former Solicitors General who endorse Ms. Kagan's nomination to be Solicitor General of the United States. The letter states, in part:

"We are confident that Dean Kagan will bring distinction to the office, continue its highest traditions and be a forceful advocate for the United States before the Supreme Court. Elena Kagan would bring to the position of Solicitor General a breadth of experience and a history of great accomplishment in the law. We believe she will excel at this important job of melding the views of various agencies and departments into coherent positions that advance the best interests of our national government. She will be a strong voice for the United States before the Supreme Court. Her brilliant intellect will be respected by the Justices, and her directness, candor and frank analysis will make her an especially effective advocate."

At the same time, we want the Solicitor General to be independent. That person must exercise independent judgment in representing the best interests of the United States before the Court. Ms. Kagan has shown that independence throughout her career, but she also understands she must follow the law. Let me cite one final letter in support of Ms. Kagan's nomination. The letter is from former

Deputy Attorney General Jamie Gorelick and former Attorney General Janet Reno. The letter notes that Elena Kagan would be the first woman to hold this office and that the confirmation will:

“..... represent an important milestone for the Department of Justice and for women in the legal profession. We have no hesitation in concluding that Kagan possesses the skills and character to excel in the position for which she has been nominated.”

Tomorrow will mark President Obama's 60th day in office, and I think it is fitting that today we are on the verge of confirming Elena Kagan's nomination so she can join with the Attorney General in helping to restore the competence of the Department of Justice for the American people. I am certain she will make an excellent Solicitor General, and I hope we will promptly confirm her nomination.

With that, I yield the floor.